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BOOK REVIEWS.

POMEROY'S *EQUITY JURISPRUDENCE*, in four volumes. By JOHN NORTON POMEROY, LL. D. (Third Edition) Annotated and Enlarged, and supplemented by a *TREATISE ON EQUITABLE REMEDIES*, in two volumes, by JOHN NORTON POMEROY, JR. San Francisco: Bancroft-Whitney Company, 1905. Pp. lviii, 1-859; xiii, 860-1806; xv, 1807-2626; viii, 2627-3525; xxx, 932; xix, 933-1875.

It is generally true that a new edition of a law book requires less extended comment than is due the first publication. Particularly is this so in the case of Prof. Pomeroy's work on Equity Jurisprudence. Since its first publication in 1881 it has steadily gained in acceptance as an authority upon this portion of the law and in recognition as an illuminating exposition of an important subject. The profession is accordingly already familiar with its general scope and character, and the frequency of its citation by the courts throughout the country has impressed it with an authoritative character attained by few legal treatises.

In some measure the present edition resembles the second edition published in 1892, for the original text of the first four volumes is almost unchanged. There have been added, however, extensive notes covering the cases which have been decided since the former publication of the work. These are referred to in separate notes so as to distinguish at every point the results of the elder Pomeroy's work. Volumes V and VI are really an expansion of Volume IV. They give professedly a restatement of the matter contained therein, but altered and elaborated so as to include in the text the results of the later cases. In great part the original text of Volume IV has been retained where possible, and this has been supplemented in the body of the work by the additions of the present Prof. Pomeroy. A difference of style is noticeable in view of this method of composition, but this, we incline to think, would open the author to but little criticism. More doubtful, however, is the wisdom of publishing the same material in the fourth volume. In our judgment this volume might well have been omitted.

It is difficult to appraise the beneficent influence of this treatise on Equity Jurisprudence. It has doubtless been very great. Fortunately it was given to a man to understand the dangerous tendencies of the reformed procedure, who was of

sufficient mental strength to make a statement of equitable principles at once comprehensive and scientific, and yet lacking in that rigorous inelasticity, which rendered the common law in need of the modifying influence of equity. That the consolidation of legal and equitable principles and their administration together might result to the disadvantage of the latter, and in consequence diminish the capacity of the principles of law to develop with the necessity for their application to new conditions, was lost sight of by many profound jurists. Prof. Pomeroy, however, fully realizing this possibility endeavored to meet it by an exposition of the nature of equitable jurisprudence which should set forth its relation to the general body of the law, and indicate the true operation of the Code Procedure. The effect of his work can best be understood by those familiar with the results of the reformed procedure, for it is not, we believe, too much to say that its success has depended on the degree to which the courts have, consciously or unconsciously, followed the theory of this learned author. Even in England, where a special provision was inserted in the Supreme Court of Judicature Act to the effect that, "Generally, in all matters in which there is any conflict or variance between the rules of equity and the rules of the common law with reference to the same matter, the rules of equity shall prevail," the tendency which Prof. Pomeroy anticipated has appeared in some of the later cases. That this same tendency has not been more seriously felt in this country, in those jurisdictions where the consolidation of legal and equitable actions has occurred, is due in large measure to this treatise.

In our judgment it is accordingly entitled to a high meed of praise, for a study of code procedure in its operation throughout the States, under the varying theory of its scope and purpose, has convinced us that in the mode of operation advocated and explained by Prof. Pomeroy it represents the actual and natural tendency existing at the present day, and is in reality, despite assertions to the contrary, the scientific form of procedure.

To realize this form of procedure, then, and at the same time to preserve unimpaired the essential principles of equity, and to see that they are, as they should be, controlling in the decision of controversies is the goal towards which the author worked. The acceptance which has been accorded his book is ample proof of the quality of that work.

It need hardly be said that these volumes have almost equal importance in States which have not adopted the reformed system of procedure, for Prof. Pomeroy desired to give such an exposition of equitable principles already estab-

lished as to prevent their weakening or submergence where legal and equitable actions had been consolidated. Obviously, therefore, the treatment of the subject is adapted to a jurisdiction in which equitable principles are still applied by a separate tribunal or in a distinct form.

As in the original work, the very valuable introductory matter is followed by a chapter on jurisdiction including a treatment of the exclusive jurisdiction, the concurrent and the auxiliary. Then follows a discussion of the maxims and general principles of equity, certain of its distinctive doctrines, as, *e. g.*, Penalties and Forfeitures, Election, Notice, Priorities, Estoppel, &c. Under the head of "facts and events which are occasions of equitable primary or remedial rights," the important topics of accident, mistake and fraud are considered, the last being divided into actual and constructive fraud. The so-called "Part III" includes "Equitable Estates, Interests and Primary Rights," and hereunder Trusts are extensively treated, also the topics of Conversion, Mortgages, Equitable Liens &c. The volumes on Remedies concern themselves with the well-known forms of equitable redress. We have spoken thus at length of the subdivisions of the other part of the work only to indicate the general form of classification.

In a work of the comprehensive character of this treatise on Equity Jurisprudence, and particularly in view of the nature of its subject matter, it is to be expected that the author's theories of the basic principles underlying certain branches of his subject should not meet with universal acceptance. No doubt there are instances in which the position taken may be questioned, as has been done for example with regard to the explanation of the equitable lien and of the jurisdiction with respect to multiplicity of suits, which latter topic has been especially expanded in this new volume. But while we admit the weight of these criticisms, and ourselves find certain points of disagreement in the rationale of some few topics, yet the exposition as a whole must be conceded to be masterly. Furthermore the unsatisfactory character of the explanation does not prevent the statement of the actual results of the decided cases from being accurate.

It is unnecessary to refer to the excellence of style which characterizes the work of the elder Pomeroy, an excellence to which his accomplished son cannot and does not lay claim, We believe, however, that for convenience sake there might well have been a general revision and rewriting of the notes, leaving the text in its original form except for supplemental paragraphs distinguished as such.

In what we have said of Prof. Pomeroy's professed purpose, we could not be understood as implying that his work is written with any bias or distortion of principles. On the other hand, the treatment is clear, cogent and correct, depending on its own lucidity and accuracy to preserve the great system of Equity Jurisprudence unimpaired where it comes under the administration of the same judges who apply the principles of the common law. Whether in such a jurisdiction or in a jurisdiction still preserving the ancient distinction, it can well lay claim to being in its field easily first.

H. W. B.

DUE PROCESS OF LAW UNDER THE FEDERAL CONSTITUTION.
By LUCIUS POLK McGEHEE, Professor of Law in the
University of North Carolina. Northport, Long Island;
Edward Thompson Co. 1906. Pp. x, 451.

This book is one of a series of "Studies in Constitutional Law" limited in its scope, as indicated by its title, to a consideration of the limitations on State and Federal activity enforceable under the "due process of law" restrictions of the United States Constitution. The subject has, of course, been isolated for special study by other text writers, notably by Mr. Guthrie in his book on the Fourteenth Amendment, but it is a branch of the law in which the cases constantly arising are increasing so rapidly that frequent revision of the principles applicable is necessary. In Mr. McGehee's book the material available, so far as contained in the decisions of the United States Supreme Court, is collected with thoroughness. Decisions from the State courts are also utilized quite as frequently, we believe, as their importance requires.

In the division of the subject the author accepts the classification which for some time now has seemed in fair way to meet with general acceptance; for after considering the history of the clause, the elements of due process, the general principles involved, the questions of jurisdiction, and the rights and persons protected by the limitation on governmental activity, he discusses the restriction in its relation to the three great powers of Taxation, Eminent Domain and the Police Power. Procedure, which has not infrequently been employed as a sub-title under which to group various decisions is classified with the "Rights" protected by due process and treated in the chapter devoted to that subject.

The style is commendable for its clearness and excels so much in this particular, that the book is easily within the appreciation of the lay reader, and could no doubt be used to advantage as a text book for students of social science.